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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT TACOMA

9 ALLISON N. RANDAL, an individual,

10 Plaintiff,

v.

11 XPO LOGISTICS, INC, a Delaware
12 corporation conducting business in the
13 State of Washington; MICHAEL D.
14 MICHELENA, an individual employed by
XPO LOGISTICS, INC.; J. DOE
CORPORATIONS AND/OR ENTITIES 1-
5; and J. DOE 1-5, individuals,

15 Defendants.

NO. 3:18-cv-6002 BHS

**DEFENDANTS XPO LOGISTICS,
INC. AND MICHAEL MICHELENA'S
[PROPOSED] FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

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17 Defendants XPO Logistics, Inc. and Michael D. Michelena (collectively “Defendants”),
18 submit the following Proposed Findings of Fact and Conclusions of Law in advance of the trial of
19 this matter to the Court on October 20, 2020.

20 I. **FINDINGS OF FACT**

- 21 1. Allison N. Randal (“Plaintiff”) is a 45-year-old female and presently resides in the
22 state of New York. At the time of the accident, Plaintiff was 41 years old.
- 23 2. XPO Logistics, Inc. is a corporation, headquartered in Delaware and does
24 business in the State of Washington and throughout the United States.
- 25 3. On or about December 23, 2015, at approximately 10:25 a.m., Plaintiff was
26 driving southbound on I-5, near mile marker 84, in Lewis County, Washington.
- 27 4. Plaintiff was driving with her 16-year-old son, Martin (“Max”) Randal in a 1998

1 Ford Explorer.

2 5. Defendant Michael D. Michelena (“Michelena”) was driving a 2007 International
3 semi-truck and was pulling a container trailer.

4 6. Defendant Michelena was driving the semi-truck and trailer on behalf of XPO
5 Logistics, Inc.

6 7. Defendant Michelena was driving the semi-truck and trailer two vehicles behind
7 Plaintiff.

8 8. Defendant Michelena’s semi-truck and trailer rear-ended a truck behind Plaintiff’s
9 vehicle, which then rear-ended Plaintiff’s vehicle.

10 9. Plaintiff sustained injuries to her left lower extremity as a result of the subject
11 motor vehicle accident.

12 **II. CONCLUSIONS OF LAW**

13 1. Pursuant to 28 U.S.C. §1332(a)(1), this Court has diversity jurisdiction because
14 Plaintiff does not share a state of citizenship with the Defendants. This Court also
15 has jurisdiction based on the amount in controversy, which exceeds \$75,000.
16 Venue is proper in the Western District of Washington, pursuant to 28 U.S.C.
17 §1391(b)(2) and (c)(2), because a substantial part of the events or omission giving
18 rise to the claims herein occurred in Lewis County and Defendants are subject to
19 this Court’s personal jurisdiction with respect to the civil action in question.

20 2. Defendant Michelena was working in the course and scope of his relationship
21 with Defendant XPO Logistics, Inc. at the time of the accident and was negligent
22 in the operation of his semi-truck and trailer.

23 3. The Defendants are liable to the Plaintiff only for the injuries and damages
24 proximately caused by the negligence of the Defendants.

25 4. The Plaintiff has the burden of proof to establish entitlement to each element of
26 her claimed damages by a preponderance of the evidence.

27 5. The Plaintiff has failed to meet her burden of proof to establish entitlement to

1 damages for past medical expenses.

2 6. The Plaintiff has failed to meet her burden of proof to establish entitlement to
3 damages for past lost income.

4 7. The Plaintiff has failed to meet her burden of proof to establish entitlement to
5 damages for loss of future earning capacity.

6 8. The Plaintiff has failed to meet her burden of proof to establish entitlement to
7 damages for future medical expenses.

8 9. The Plaintiff has failed to meet her burden of proof to establish entitlement to
9 damages for life care plan costs.

10 10. The Plaintiff has failed to meet her burden of proof to establish entitlement to
11 damages for pain and suffering.

12 11. Plaintiff has not proffered admissible expert testimony regarding her claims for
13 past income loss and loss of future earning capacity. Plaintiff's proffered expert
14 testimony is not admissible under Federal Rules of Evidence Rule 702.

15 Plaintiff has not proffered testimony from a qualified medical expert in the field of foot
16 and ankle orthopedic surgery regarding her need for future surgery, based on a reasonable degree
17 of medical certainty, and only has provided medical testimony that is unsupported speculation.
18 Therefore, Plaintiff has failed to meet her burden of proof on this issue. *McLaughlin v. Cooke*,
19 112 Wn.2d 829, 836, 774 P.2d 1171 (1989).

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21 DATED this ____ day of _____ 2020.

22
23 _____
24 Hon. Benjamin H. Settle
25 United States District Judge
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1 FORM APPROVED:

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